not a collateral promise to pay on demand if the primary debtor did not pay. The clause in question imposed a primary and parallel obligation on the first defendant and all the guarantors to pay on demand all moneys owing to the bank. Clause 14 made each of the guarantors a principal debtor. And the terms of the document was such that the debt envisaged on demand was a present debt and not one which was payable by instalments being converted into an accelerated obligation to pay the whole at once.

In these circumstances my view is that no antecedent demand was required to create a cause of action and the mere filing of the writ and the service thereof was a sufficient demand obliging the defendants to pay. In any event I would go further and hold in the circumstances of this case that the letter dated 18 December 1982 was a demand on the third defendant as well as all the other directors of the company and the company itself.

The only other point here I need to deal with is Mr Nadkarni's submission that the bank was not entitled to judgment for more than $100,000 under the guarantee. With this interpretation of the guarantee agreement I am unable to agree. The words clearly made the guarantors liable for the repayment not only of the overdraft facility of $100,000 but also the interest which accrued thereon at the agreed rate.

So I would confirm the judgment I have given herein against the third defendant for the sum claimed in the writ with interest thereon and costs.

Order accordingly.

Solicitors: *Adam & Co*; *Skrine & Co.*

Reported by *Ng Sheau Jiuan*

Public Bank Bhd v Chan Siok Lie & Ors

HIGH COURT (KUALA LUMPUR) – CIVIL SUIT NO C3599 OF 1985
SHANKAR J
15 FEBRUARY 1988

Banking – Guarantee – Notice of demand issued to guarantors – Whether prior demand a condition precedent to suing guarantors – Whether such notice should state precisely the amount due and owing – Effect of guarantee making guarantors principal debtors

Banking – Guarantee – First guarantee signed before approval of increased credit facilities were obtained from plaintiff bank – Subsequent approval obtained and acknowledgment signed by defendant guarantors in capacity as directors – Whether defendant guarantors can plead no assent to variation of their obligations in their capacity as guarantors

In this case, the plaintiffs are bankers and the defendants were directors of Feng Sheng, a company dealing, inter alia, with the import of Italian tiles. In consideration of the plaintiffs granting some credit facilities to Feng Sheng, all the three defendants signed a letter of guarantee ('the first guarantee'). Subsequently, the defendants signed a further letter of guarantee ('the second guarantee') for increased facilities, some of which facilities superseded and cancelled the previous facilities granted. Sometime in 1984, the plaintiffs filed an action against Feng Sheng and the three defendants ('the first action') and obtained judgment against Feng Sheng and the first defendant. In June 1985, the third defendant signed a notice on behalf of Feng Sheng that a meeting of the creditors of the company was proposed to confirm that Feng Sheng be wound up in a creditors' voluntary winding up and to consider a statement of the company's affairs. In the copy of the notice sent to the plaintiffs, it was stated by the third defendant on behalf of Feng Sheng that the amount admitted to be due to the plaintiffs as at 30 April 1985 was $249,475.49. Subsequently, the plaintiffs' solicitors sent a registered letter to each of the defendants demanding various amounts outstanding pursuant to the first and second guarantees. When the defendants ignored the notice, the plaintiffs instituted the present action repeating in the statement of claim the figures set out in the letter of demand. The third defendant, after entering appearance, pointed out that the trust receipt facility was for $250,000 and the overdraft facility was for $50,000 and not the other way round as stated in the demand letter and statement of claim. He also contested, inter alia, the method of calculation of interest. The plaintiffs then amended their statement of claim and obtained summary judgment against the defendants. The defendants then appealed to the High Court.

In their appeal, the defendants contended that: (a) the notice of demand should state precisely the amount due and owing by the principal debtor so that the guarantor could elect whether to comply with it; (b) the judgment obtained against Feng Sheng in the first action was a nullity because it was for too much and as an excessive claim nullified the judgment, it should equally nullify the demand against the guarantors; (c) since the first guarantee was executed before the bank approved the increased facility there had been a variation of the guarantors' obligations under the first guarantee. It was submitted that as regards the first guarantee, the capacity of the defendants should be compartmentalized as guarantors only. As the acknowledgement and confirmation of the plaintiffs' approval to grant increased facilities to Feng Sheng after the first guarantee was executed was given by the defendants in their capacity as directors, no assent to the variation in their capacity as guarantors was given.

Held, dismissing the defendants' appeal:

(1) There is no general rule that in all cases, regardless of the terms of the document, a prior precise demand is a sine qua non to the commencing of an action. Nor is there any general rule that a prior notice must be given in all cases. The writ itself is a notice. Nor is there any general rule that in all cases, unless the precise amount owing is correctly stated in a notice, the notice will be invalidated.

(2) Where the effect of a guarantee agreement is to make the guarantors principal debtors, the necessity for a demand could be obviated because the character of the agreement under which payment is sought is no longer strictly collateral.

(3) A judgment which has been taken for too much is not a nullity. The judgment, if it is issued under the seal of the court, is enforceable like any other judgment of the court. If there is no appeal against it the judgment will crystallize in the suit. In such cases, it could be said that the judgment is voidable at the instance of an aggrieved party upon whom the onus will lie to

satisfy a subsequent court that it is just and proper that the judgment in question should be set aside. In the present case, Feng Sheng had notice of the claim against it. It did not take objection to the amount at the first instance and it did not appeal. It is clearly res judicata.

(4) Feng Sheng was supplied with regular monthly statements from the bank setting out its indebtedness and the interest rate charged. It is idle for them to claim that they did not know what the amount of their indebtedness was. One also cannot ignore the statement of Feng Sheng's director, the first defendant, and its pro tem liquidator who issued notices for the creditors' voluntary winding up in which they admitted that they owed the bank $249,475.49 as on the date for which that notice was conditioned.

(5) The third contention of the defendants is also devoid of merit. The three defendant directors were active parties in applying for the increase in the financial facilities accorded to Feng Sheng by the plaintiffs. Not only did they negotiate this increase but they also signed the approval letter acknowledging and confirming the arrangements. It is idle for the defendants' counsel to contend that because they did this with their directors' hats on, their minds were oblivious to the liabilities they were taking upon themselves as guarantors.

Cases referred to

1 *Mok Hin Wah & Ors* v *United Malayan Banking Corpn Bhd* [1987] 2 MLJ 610 (refd)
2 *Malayan Banking Bhd* v *Lim Chee Leng* [1985] 1 MLJ 214 (refd)
3 *Esso Petroleum Co Ltd* v *Alston Bridge Properties Ltd* [1975] 1 WLR 1474 (refd)
4 *O'Day* v *The Commercial Bank of Australia Ltd* (1933) 50 CLR 200 (refd)
5 *Bank of Montreal* v *Winter* (1981) 101 APR 385 (refd)
6 *Bank of Baroda* v *Panessar & Ors* [1987] 2 WLR 208 (refd)
7 *Winstone Limited* v *Bourne* [1978] 1 NZLR 94 (refd)
8 *Coronation Electronics Ltd* v *Lalcand Mahtani* [1987] 1 MLJ 190 (refd)
9 *Bunbury Foods Pty Ltd* v *The National Bank of Australasia Ltd* (1984) 51 ALR 609; 153 CLR 491 (refd)

CK Yeoh for the plaintiffs/respondents.
Teh Boon Eng for the second and third defendants.

Cur Adv Vult

Shankar J: This judgment concerns the extent to which guarantors can successfully ward off claims from creditors merely because they have not first been served by the creditors with a written demand for the precise amount claimed to be owing before the action was filed. It also deals with some other issues which may arise when such a defence is taken.

The facts are simple enough. The plaintiffs are bankers. Feng Sheng (M) Sdn Bhd ('Feng Sheng') was a company dealing, inter alia, with the import of Italian tiles and its resale on the local market. It looked to the plaintiffs for finance. The defendants in this action were each directors of Feng Sheng.

Before April 1983 the plaintiffs had granted Feng Sheng a trust receipt facility of $50,000, a letter of credit facility of $60,000, and a shipping guarantee facility of $30,000, making a total facility of $140,000.

Feng Sheng obviously decided to expand its business and on 16 March 1983 all the three defendants signed a written letter of guarantee ('the first guarantee') to cover the indebtedness of Feng Sheng to the extent of $500,000. This guarantee is a formal document printed on the plaintiffs' notepaper. It is stated to be in consideration of the plaintiffs continuing an account with and making advances or otherwise giving credit or accommodation to Feng Sheng. Clause 1 expressly stated that the defendants 'will pay to you on demand all money which now is or may during the operation of this agreement be owing to you from the customer ... including interest at such rate as may be from time to time agreed between the customer and you ...'. Clause 4 stated that the guarantee shall be a continuing guarantee to the extent of $500,000 for the purpose of securing the whole of the general balance due from Feng Sheng to the plaintiffs. Clause 5(ii) provided that the guarantee shall be without prejudice to and shall not be affected nor shall the defendants or any of them be released or exonerated by any of the matters following, that is to say, inter alia, 'the variation ... or modification of any security or instrument negotiable or otherwise and whether satisfied by payment or not'. Clause 7 stated that any account settled or stated by or between the plaintiffs and Feng Sheng or admitted by or on behalf of Feng Sheng may be adduced by the plaintiffs and shall in that case be accepted by the defendants and each of them as conclusive evidence that the balance or amount thereby appearing is due from Feng Sheng to the plaintiffs. Clause 11 of the guarantee provided that the plaintiffs may enforce the guarantee against the defendants at any time jointly or severally notwithstanding that any of the bills or other instruments covered by it may be in circulation or outstanding and include the amount of the same or any of them in the said general balance or not at the plaintiffs' option. It further provided that the guarantee shall not be determinable by the defendants except on the terms of the defendants making full provision up to the limit of the guarantee for any then outstanding liability or obligation on the plaintiffs' part and on Feng Sheng's account.

I need to emphasize here that the defendants were directors of Feng Sheng. When they signed the first guarantee each of them took an active part in the transaction for the provision of the increased facilities by the plaintiffs.

After the execution of the first guarantee the plaintiffs on 28 April 1983 approved Feng Sheng's application for the undermentioned facilities:

(i) an overdraft facility of $50,000;
(ii) a trust receipt facility of $250,000 (this superseded and cancelled the previous trust receipt facility of $50,000);
(iii) a letter of credit facility of $250,000 (this superseded and cancelled the previous letter of credit facility of $60,000);

(iv) a shipping guarantee facility of $70,000 (this superceded the previous shipping guarantee facility of $30,000).

The offer letter clearly stated that these facilities (except the shipping guarantee facility) are to be guaranteed by all the directors of the company, namely, the defendants abovenamed jointly and severally. A further letter of guarantee for $50,000 for the overdraft facility aforesaid was enclosed with the offer letter for execution by the defendants. This the defendants each executed on 10 May 1983 ('the second guarantee').

As appears from the monthly bank statement of Feng Sheng which is in evidence and pursuant to this accommodation, Feng Sheng on or about 26 May 1983 commenced to avail itself of the overdraft facility by incurring a debit of about $15,000. After that date the account continued to be in debit until the facility was terminated. Again as appears from the details relating to the operation of the trust receipt account Feng Sheng availed itself of the trust receipt facility aforesaid on or about 22 November 1983 when it received accommodation of about $30,000 and thereafter steadily increased its indebtedness till it reached a sum of about $192,000 on or about 4 July 1984.

Sometime in 1984 the plaintiffs filed an action against Feng Sheng and the three defendants in the Kuala Lumpur High Court under Civil Suit No C2758 of 1984 ('the first action'). On 13 June 1985 the plaintiffs obtained judgment against Feng Sheng alone after it got the defence of Feng Sheng struck out under O 18 r 19(1)(a) of the Rules of the High Court. The amount of the judgment recovered against the first defendant was for $258,267.74 as of the 4 July 1984 together with further interest thereon at the rate of $107.60 per day as from 5 July 1984 till realization.

The first defendant was legally represented in that action. It did not appeal against the judgment given. It did not satisfy the judgment either.

On 10 June 1985 Ng Yau Meng, the third defendant herein, signed a notice on behalf of Feng Sheng that a meeting of the creditors of the company was proposed on 21 June 1985 to confirm that Feng Sheng be wound up in a creditors' voluntary winding up and to receive and consider a statement of the company's affairs. In the copy of the notice sent to the plaintiffs it was stated by Mr Ng Yau Meng on behalf of Feng Sheng that the amount admitted to be due to the plaintiffs as at 30 April 1985 was $249,475.49. There is no evidence before me as to what happened at this meeting if one was held. On 24 June 1985 the plaintiffs through their solicitors sent an AR registered letter to each of the defendants. In this letter the plaintiffs' solicitors stated that the account maintained by Feng Sheng was outstanding and had not been settled despite repeated demands. Therefore the plaintiffs' solicitors demanded from each of the defendants pursuant to the first and the second guarantees for the following amounts outstanding, namely:

(i) under the overdraft account inclusive of interest as at 31 May 1985 $236,219.44 with daily interest from 1 June 1985 at $20.81 at the interest rate of 15% and

(ii) under the trust receipt account inclusive of interest as at 31 May 1985 $58,591.09 with daily interest with effect from 1 June 1985 of $86.79 at the rate of 16.5%. Notice was given to each of the defendants that if they failed to pay up within seven days legal proceedings would be commenced.

The defendants ignored this notice. On 4 July 1985 the plaintiffs instituted the present action. In the statement of claim the plaintiffs' solicitors repeated the figures which they had set out in the letter of demand under the same heads as aforesaid.

Appearance was entered on behalf of all three defendants by solicitors. The plaintiffs then applied for summary judgment under O 14. In the affidavit in support the plaintiffs' branch manager made the usual averments. He stated that the judgment obtained against Feng Sheng was still unsatisfied. He claimed that after the judgment was obtained the plaintiffs had informed Feng Sheng on 18 February 1985 of new interest rates. He then provided the figures of the indebtedness as on 31 May 1985 and claimed there was no defence to the action.

Teh Boon Eng for the second and the third defendants.

To this affidavit Ng Yau Meng, the third defendant, responded on behalf of all the defendants. He pointed out that it was the trust receipt facility which was for $250,000 and the overdraft facility for $50,000 and not the other way round as stated in the demand letter and in the statement of claim. He contested the right of the plaintiffs to vary the rate of interest once the first action was initiated. He also contested the method of calculation of interest and challenged the validity of the notice of demand. Overall, he claimed that the plaintiffs' action in the present suit was premature because the plaintiffs did not have a complete cause of action against the defendants.

In response to this affidavit the plaintiffs applied to amend their statement of claim. The effect of this amendment was to claim $206,431.53 being the outstanding amount due on the trust facility as at 4 July 1984 with further daily interest accruing thereon at $76.258 which is the equivalent of 14.5% pa from 5 July 1984 till date of payment. And $50,775.26 was claimed as being the outstanding amount due on the overdraft facility as at 4 July 1984 with further daily interest accruing thereon at $20.81 which is the equivalent of 15% pa from 5 July 1984 till the date of payment. It is to be noted that these interest rates are in accordance with the plaintiffs' approval letter dated 28 April 1983 without any further

variation. It is also to be noted that if this was the proper figure of Feng Sheng's indebtedness as at 4 July 1984, then the judgment which had been obtained against Feng Sheng on 4 July 1984 was for a little too much. It is also to be noted that the amount stated in the demand letter to the defendants dated 24 June 1985 was not quite correct.

On 5 July 1985 the pro tem liquidator of Feng Sheng sent out a second notice of a meeting to be held on 12 July 1985 to have Feng Sheng voluntarily wound up and to receive and consider a statement of Feng Sheng's affairs. In this notice it was once again stated for Feng Sheng by the pro tem liquidator that the company owed the plaintiffs as at 30 April 1985 the sum of $249,475.59 and that there were no other known creditors. What happened at this meeting is not in evidence.

Some further affidavits were filed providing additional material giving bank's statements and other documents to prove the indebtedness of Feng Sheng and on 8 May 1987 after hearing arguments from both parties the senior assistant registrar gave summary judgment to the plaintiffs against the defendants herein for the amended amounts claimed as aforesaid. Against this judgment the defendants appealed.

By the time the appeal came up before me the first defendant had been adjudicated a bankrupt. Consequently Mr Teh of counsel for the defendants only advanced submissions for the second and third defendants as to why this appeal should be allowed.

His first line of argument was based on *Mok Hin Wah & Ors* v *United Malayan Banking Corpn Bhd*[1] where the Lord President held that since bank guarantees invariably specify that the liability of the guarantor is to pay on demand, the words are not devoid of meaning or effect but make the demand a condition precedent to suing the guarantor. So it was contended before me that in order to be a proper demand and a valid course of action, it was imperative that the notice of demand should precisely state the amount due and owing by the principal debtor so that the guarantor could elect whether to comply with it.

Then it was contended that the judgment obtained against Feng Sheng in the earlier action was a nullity because it was far too much. So it was argued that if an excessive claim nullified the judgment, it should equally nullify the demand against the guarantors.

The third line of argument was that since the first guarantee was executed in point of time before the bank approved the increased facility, there had been a variation of the guarantors' obligations under the first guarantee. It was submitted that as regards the first guarantee the capacity of the defendants should be compartmentalized as guarantors only. But the approval letter dated 28 April 1983 was addressed to Feng Sheng. It bore an acknowledgement by each of the defendants that they confirmed the above arrangements. As to this it was argued that this acknowledgement and confirmation by the defendants was in their capacity as directors and not as guarantors. Since no separate acknowledgement, approval or confirmation of these variations had been executed by the defendants in their stated capacity as guarantors it was submitted that a variation invalidated the first guarantee.

Counsel for the defendants left it to be inferred that the only valid guarantee therefore was the second guarantee for $50,000. The plaintiffs were represented by Mr Yeoh Chong Keng. I have derived considerable assistance from his submission and the authorities which he has cited. As I have incorporated these into my judgment, it is not necessary for me to set them out separately.

I agree that great care should be taken when applying *Mok Hin Wah's* case[1] to remember that it will only apply if the words of the guarantee specifically make a prior demand a condition precedent to suing the guarantor. There is no general rule that in all cases, regardless of the terms of the document, a prior precise demand is a sine qua non to the commencing of an action. Nor is there any general rule that a prior notice must be given in all cases. The writ itself is a notice: see *Malayan Banking Bhd* v *Lim Ghee Leng*.[2] Nor is there any general rule that in all cases, unless the precise amount owing is correctly stated in a notice, the notice will be invalidated. The law indeed is otherwise. In *Rowlatt on Principal and Surety*, 4th Ed, p 115 it is stated:

> A surety has not, unless his contract so provides, any right to require a demand to be made upon him before action. If a surety ... promises to pay the principal debt 'on demand' a demand must be made upon him before he can be sued. His obligation is to pay the collateral sum, and differs from a promise to pay on demand a present debt owing by the promisor. In the latter case an action can be brought at once without any other demand than the writ.

The authorities for this proposition are contained in the text and I think that this statement correctly represents the position under Malaysian law also.

A far clearer exposition of the law on the point is given in *O'Donovon's Modern Law of Guarantee* at pp 379-382. Adopting the words of that textbook there is no necessity for the creditor to make a demand upon the guarantor before enforcing the guarantee, unless the terms of the guarantee so required. In such a case a demand (in addition to the issue of proceedings) is essential because it has been held that in the case of a sum of money payable *under a collateral agreement* such as the guarantee in these terms no cause of action arises until the demand is made. At p 380 of the text it says that even though the amounts under the guarantee are expressed to be payable 'on demand', the inclusion of a 'principal debtor' clause in the body of a guarantee may obviate the

necessity for the creditor to make a demand. Reference is made to the comments of Walton J in *Esso Petroleum Co Ltd* v *Alston Bridge Properties Ltd.*[3] Thus I hold, that where the effect of a guarantee agreement is to make the guarantors principal debtors, the necessity for a demand could be obviated because the character of the agreement under which payment is sought is no longer strictly collateral. At p 381 *O'Donovon* deals with the form of the demand. *O'Day* v *The Commercial Bank of Australia Ltd*[4] at p 216 and *Bank of Montreal* v *Winter*[5] are cited as authorities for the proposition that in the absence of a particular stipulation in the guarantee it is probably unnecessary for the demand to state the exact sum owing, although in the case of an ordinary guarantee there is more justification for such a requirement than there is in the context of mortgage, where the mortgagor should be aware of the state of his account with the mortgagee. *O'Donovon* further states that the demand of the guarantor therefore simply requires the payment of 'all principal and interest and other moneys owing by the guarantor'. Even in cases where a demand is made for an excessive amount, it may be effective in respect of the amount actually owing.

Bank of Baroda v *Panessar & Ors*[6] is authority for the proposition that where a creditor was entitled by the terms of his security to demand repayment of all moneys thereby secured there was no need for him to specify the precise amount of the debt in making a demand for the moneys due thereunder and that accordingly a valid demand for the moneys owing to the bank from the company had been made where the demand was for 'all moneys due to us' notwithstanding that the precise amount of the debt was not thereby specified.

The next line of authorities with which I shall now deal is on the question of variation. *Rowlatt on Principal and Surety* at p 9 says 'where the surety takes any active part in the transaction constituting the variation, he is clearly not discharged'. In *Winstone Ltd* v *Bourne*[7] at p 94 the Supreme Court there held that while the functions of the defendants as directors and their functions as guarantors of the company's debt must be kept distinct as a matter of law the existence of factual knowledge on their part and their consent to a variation in the principal contract was a different matter. Knowledge and consent to the potential increase in their personal liabilities as guarantors made the defendants in that case liable. *Coronation Electronics Ltd* v *Lalcand Mahtani*[8] is a Singapore case in which *Winstone Ltd* v *Bourne*[7] was referred to. Where a guarantor is a director of the principal debtor company and he negotiates with the creditor in that capacity he will seldom if ever be allowed to plead that he had not assented to the variation in his capacity as a guarantor but only in his capacity as a director of the principal debtor.

The law being as I have hereinbefore stated it, I now hold as follows.

It would not be a precise use of language to say that a judgment which has been taken for too much is a nullity. The judgment if it is issued under the seal of the court is enforceable like any other judgment of the court. If there is no appeal against it the judgment will crystallize in the suit. At best therefore in such cases it could be said that the judgment is voidable at the instance of an aggrieved party upon whom the onus will lie to satisfy a subsequent court that it is just and proper that the judgment in question should be set aside. In the present case Feng Sheng had notice of the claim against it. It did not take objection to the amount at the first instance and it did not appeal. I do not think I need to say anymore than that the present defendants can derive no assistance from a set of facts which is clearly res judicata.

I do not have to decide in this case whether the terms of the first and second guarantees imposed upon the defendants the liability of a principal debtor even though that argument is clearly open to the plaintiffs. Clause 1 here does provide for the defendants to pay on demand but then cl 11 says that the plaintiffs can enforce the guarantee against the defendants at any time jointly or severally notwithstanding that any bills or other instruments covered by it may be in circulation or outstanding. In other words cl 11 appears to suggest that this is a divisible contract in which the guarantors have assumed liability not for some collateral amount but for such part of the principal debt as the bank at its option chooses to sue for.

In this case the plaintiffs did issue a demand letter to each of the defendants on 24 June. Admittedly there were errors in both the form and the substance in the demand letter. But as Starke J said in *O'Day* v *The Commercial Bank of Australia Ltd*[4] at p 216, 'the demand is for the purpose of bringing home to the company that the bank is demanding its money and that is sufficiently indicated by claiming all principal interest and other moneys owing to it.'

The validity of such notice was dealt with in much greater detail in *Bank of Baroda* v *Panessar & Ors*[6] by Walton J at pp 214-216. In the course of his judgment Walton J referrred to the decision of the High Court of Australia in *Bunbury Foods Pty Ltd* v *The National Bank of Australasia Ltd.*[9] The passage at pp 619-620 is most relevant. The passage reads:

> It is of some materiality to note that it is not essential to the validity of the notice calling up a debt that it correctly states the amount of the debt. Even a notice given to the mortgagor by the mortgagee as a condition precedent of a power of sale is not rendered invalid because it demands payment of more than is due ... it may be thought that this provides sufficient reasons for insisting that the creditor should spe-

cify the amount of the debt in his notice demanding payment for the validity of a notice will not be imperilled by an error in the statement of the amount. However, there is little point in requiring that the notice should state the amount if the correctness of the amount is not essential to the validity of the notice. In this situation insistence on the requirement may result in creditors taking insufficient care in stating their amount of the debt, thereby contributing to confusion on the part of debtors. The foregoing examination supports the view that the interests of the party will be more adequately protected by the principle that the debtor must be allowed a reasonable opportunity to comply with the demands before the creditor can enforce or realize the security then by the adoption for the suggested proposition that the notice of demand must specify the amount of the debt. In determining whether the debtor has had such an opportunity it will be relevant to take account of the debtor's knowledge, lack of knowledge and means of knowledge of the amount due and of the information which the creditor has provided in that respect, including the response which he has made to any inquiry by the debtor.

After adopting the reasoning of the High Court of Australia above, Walton J said at p 216:

Indeed it is quite clear that knowledge of the precise amount of the sums outstanding is only required in the exceptional case, because in most cases, as in the present case, the debtor has no real means whatsoever of paying off the sum which is due and it would seem to be idle to put the creditor to what might be very considerable expense in ascertaining the precise amount due when there is no likelihood that that will represent a realistic target at which the debtor can aim. If, on the contrary, the debtor is in a position to pay off the sum demanded and wishes to know the exact and precise sum, he can communicate with the creditor and ask the creditor what sum he is expecting to be paid. Under those circumstances, one imagines that the creditor would say, 'Well, the last accounts, which are not complete, show in fact the sum of £X owing from you. If you can pay that sum at once, then we need not worry too much about the additional sum; we can settle that later', or something along those lines. At any rate, on this point, I propose to follow the Australian case, which seems to me to be redolent of good common sense.

In the case before me the defendants were directors of Feng Sheng. Feng Sheng was supplied with regular monthly statements from the bank setting out its indebtedness and the interest rate charged. It is idle for them to claim that they did not know what the amount of their indebtedness was. Indeed when this suit was filed the third defendant on behalf of the other two was able to contest the interest calculations to the point where the plaintiffs were driven to reduce their claim on the basis of a computation based on the original approval letter. Consequently, when judgment was given by the senior assistant registrar it was for a sum which was the least that the plaintiffs could sue for.

Side by side with this, one cannot ignore the statement of Feng Sheng's director, the first defendant and its pro tem liquidator who issued notices for the creditors' voluntary winding up in which they admitted that they owed the bank $249,475.49 as on the date for which that notice was conditioned.

Consequently I hold the submission of counsel for the defendants on this aspect of the case to be without any real substance.

As for the other line of argument with regard to the alleged variation of the security I hold that this is also devoid of merit. The three defendant directors were active parties in applying for the increase in the financial facilities accorded to Feng Sheng by the plaintiffs. Not only did they negotiate this increase but they also signed the approval letter acknowledging and confirming the arrangements. It is idle for the defendants' counsel to contend that because they did this with their directors' hats on, their minds were oblivious to the liabilities they were taking upon themselves as guarantors. The cases cited by Mr Yeoh and which I have referred to above are conclusive.

I would also add in passing that it is not irrelevant that Feng Sheng availed itself of the increased facility some time after the second guarantee was executed .

In all the circumstances I would dismiss this appeal by the defendants with costs to be taxed and paid by the defendants to the plaintiffs.

Appeal dismissed.

Solicitors: *Chooi & Co*; *Teh & Associates*.

Reported by *Ng Sheau Jiuan*

Re Hee Chun Meng

HIGH COURT (JOHOR BAHRU) – PETITION FOR LETTERS OF ADMINISTRATION NO 179 OF 1985
SHANKAR J
5 FEBRUARY 1988

Succession – Probate and administration – Deceased killed in motor accident – Deceased left no personal effects or immovable property – Sole asset an estate claim relating to motor accident – Whether administration bond or sureties required when extracting letters of administration – Whether praecipe fee payable under item 41, Appendix B of Rules of High Court 1980 – Contention that 'estate' does not include chose in action – Whether acceptable – Probate and Administration Act 1959, ss 2 & 35(1)(b) – Rules of the High Court 1980, Appendix B item 41

Words and Phrases – 'Estate' – Probate and Administration Act 1959, s 2

The petitioner is the brother of the deceased who was killed in a motor accident. The deceased left no tangible assets movable or immovable but the petitioner inserted an item into the estate duty affidavit stating that the sole asset left by the deceased was